

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Case No.: 3:22-cv-00375-ART-CSD

4 **Order**

5 Re: ECF No. 69

6 THE R.J. ARMSTRONG LIVING TRUST, a
7 Nevada testamentary entity, and DAVID C.
8 ARMSTONG, an individual,

9 Plaintiffs

10 v.

11 SUSAN HELEN ARMSTRONG HOLMES,
12 an individual,

13 Defendant

14 SUSAN HELEN ARMSTRONG HOLMES,
15 an individual,

16 Counter-Plaintiff,

17 v.

18 THE R.J. ARMSTRONG LIVING TRUST, a
19 Nevada testamentary entity, and DAVID C.
20 ARMSTRONG, an individual,

21 Counter-Defendants

22 Plaintiffs/Counter-Defendants filed a memorandum in support of their request for a
23 conference with magistrate¹ re: Defendant/Counter-Plaintiff's untimely discovery production and
destruction of evidence (texts and emails). (ECF No. 69.)

¹ It should be noted there are no longer any "magistrates" at the federal court. Since 1990, there are United States "magistrate judges" at the federal court. *See* 28 U.S.C. 631.

1 Plaintiffs/Counter-Defendants assert that on Saturday August 26, 2023,
2 Defendant/Counter-Plaintiff produced 57 pages of texts exchanged with her son via email, and
3 Defendant/Counter-Defendant's deposition was set to commence this morning, August 28, 2023.
4 They assert the production is untimely because Plaintiffs/Counter-Defendants previously
5 demanded these texts in discovery. In addition, Defendant/Counter-Plaintiff represented in
6 discovery responses that she regularly deletes emails and texts and did not previously produce
7 any emails and texts exchanged with third parties concerning Plaintiffs/Counter-Defendants.
8 This includes emails and texts exchanged *after* she anticipated this litigation and *after* she
9 received a litigation preservation notice. Plaintiffs/Counter-Defendants contend that this appears
10 to warrant spoliation sanctions.

11 The memorandum states that Plaintiffs/Counter-Defendants' counsel intended to call the
12 court on August 28, 2023, at 9:00 a.m., to discuss this issue in advance of Defendant/Counter-
13 Plaintiff's deposition.

14 The undersigned issued a Civil Standing Order which requires, among other things, that
15 the parties *must first meet and confer* to try and resolve any discovery dispute in compliance with
16 Local Rule IA 1-3(f). The "mere exchange of letters or e-mails does *not* satisfy the meet and
17 confer requirement. If the parties are unable to resolve their dispute informally *after a good faith*
18 *effort*, the party seeking the requested discovery must filed a motion regarding discovery dispute.
19 (ECF No. 4.)

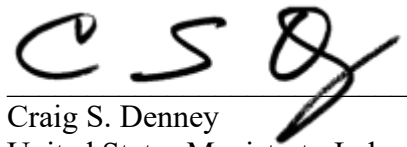
20 Plaintiffs/Counter-Defendants' memorandum does not indicate that a good faith effort
21 was made to meet and confer before the filing of the memorandum. Nor is it clear what relief
22 Plaintiff/Counter-Defendants seek. There is a request for a status conference, but the
23 memorandum indicates that counsel was going to call the court at 9:00 a.m., and that did not

1 occur. The memorandum did not seek any specific relief with respect to Ms. Holmes' deposition,
2 such as postponing the deposition. Nor has any formal motion for spoliation sanctions been filed.

3 For these reasons, insofar as Plaintiffs/Counter-Defendants' memorandum requests a
4 status conference, the request is **DENIED**. If the parties have not resolved this issue today, they
5 are directed to meet and confer, either in person or over the telephone. If the parties are not able
6 to informally resolve their dispute, and if the requested relief on the part of Plaintiffs/Counter-
7 Defendants is the issuance of spoliation sanctions, then Plaintiffs/Counter-Defendants shall file a
8 properly supported motion for spoliation sanctions under Federal Rule of Civil Procedure 37(e).
9 The court will address the issue after any such motion has been fully briefed.

10 **IT IS SO ORDERED.**

11 Dated: August 28, 2023

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13 Craig S. Denney
14 United States Magistrate Judge
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